

July 2010

## ILGA-Europe's contribution to the consultation on the EU strategy for combating violence against women 2011-2015<sup>1</sup>

### The key ILGA-Europe recommendations related to the EU strategy to combat violence against women are:

- Adoption of effective legal measures to counter gender-based violence and crimes that impact on other vulnerable groups, building upon the foundation set by the *Framework Decision on Combating Racism and Xenophobia as a Crime*;
- Place male violence against women as a core focus of the strategy, while also addressing all gender-based violence by tackling violence motivated by an intersection of various grounds, including sexual orientation, gender identity and gender expression;
- Cover men who may fall victims of violence due to their gender non-conformity and/or gender reassignment; as well as all other persons whose gender expression may not meet the social expectations for the gender assigned to them at birth with regard to dress, behaviour and mannerisms;
- Map and build upon existing strategies implemented at local, national, and European levels, in order to promote relevant guidelines and good practices in areas such as awareness raising, education, combating hate incidents, and investigation and judicial proceedings; and
- Inclusion of strategic measures to proactively combat gender stereotypes and counter patterns of patriarchy, sexism, homophobia and transphobia, as well as gendernormativity and heteronormativity.<sup>2</sup>

The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)<sup>3</sup> is firmly committed to the struggle towards gender equality, and the eradication of violence against women. It, therefore, greatly appreciates the request for contribution towards the *Consultation on an EU Strategy to combat violence against women*

<sup>1</sup> Prepared in consultation with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) [www.ilga.org](http://www.ilga.org) and Transgender Europe (TGEU) [www.tgeu.org](http://www.tgeu.org).

<sup>2</sup> These terms and concepts are explained in detail in response to question 1.2

<sup>3</sup> ILGA-Europe is a European NGO with nearly 300 national and local lesbian, gay, bisexual, transgender and intersex (LGBTI) member organisations in 46 countries, and works for human rights and equality for lesbian, gay, bisexual, transgender and intersex people at European level. ILGA-Europe enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC), participative status at the Council of Europe and receives financial support from the European Commission. It is a member of the Platform of European Social NGOs. ILGA-Europe was established as a separate region of the ILGA in 1996. [www.ilga-europe.org](http://www.ilga-europe.org)  
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and looks forward to working closely with the European Commission and other stakeholders to implement this forthcoming strategy.

In addition to its input towards this consultation, ILGA-Europe has also presented a [submission](#)<sup>4</sup> to the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) which is currently drafting a *European Convention to Preventing and Combating Violence against Women and Domestic Violence*. In its submission ILGA-Europe outlined in detail how lesbian, bisexual and transgender women fall under the scope of this Convention, and hence the need for it to address effectively the obligation of Member States to prevent and combat violence against lesbian, bisexual and transgender women. In the current draft Convention, the grounds of gender identity and sexual orientation are expressly included in the non-discrimination article.

With regard to this European Commission consultation, ILGA-Europe concurs with the position taken by the European Women's Lobby (EWL) in its contribution stressing *male violence against women*, as violence against women is a manifestation of deeply rooted gender stereotypes and unequal power relations between men and women, and is thus "both a cause and a consequence of the inequality between women and men, linked to a certain perception of their roles in the family and in society."<sup>5</sup>

However, in addition to the above, "gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered 'normal' behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights." as the Special Rapporteur on violence against women told the UN Commission on Human Rights in 2002.<sup>6</sup>

ILGA-Europe, therefore, calls on the Commission to adopt a strategy that has a wide enough scope to tackle all form of gender-based violence, while keeping male violence against women at its core.<sup>7</sup> We believe that it is also important that the strategy recognises the common roots of sexism, homophobia and transphobia and that it can be difficult to determine whether one of these factors alone, or a combination of them, was the motivating factor in any particular act of violence against lesbian, gay, bisexual, trans and intersex (LGBTI) people.

## 1. Challenges

### 1.1 What are, in your view, the main challenges (medium and long term) that a new strategy for combating violence against women should address?

#### I. Medium Term Challenges

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<sup>4</sup> ILGA-Europe, *Submission to the Council of Europe Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence* (2009) Available at: <http://www.ilga-europe.org/content/download/16192/104476/file/Submission%20to%20the%20Council%20of%20Europe%20Ad%20Hoc%20Committee%20on%20Preventing%20and%20Combating%20Violence%20Against%20Women%20and%20Domestic%20Violence.pdf>

<sup>5</sup> Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), *Interim Report*, (2009) Para. 10 [http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO\\_2009\\_4%20FIN\\_en%20\\_2.pdf](http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO_2009_4%20FIN_en%20_2.pdf)

<sup>6</sup> Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences, *Oral Statement at the 50 Session of the Commission on Human Rights* (10 April, 2002)

<sup>7</sup> ILGA-Europe believes that the strategy should expressly cover (i) ALL women including lesbian, bisexual and trans women; (ii) men who may fall victims of violence due to their gender non-conformity and/or gender reassignment; (iii) all other persons who's gender expression may not meet the social expectations for their gender with regard dress, behaviour and mannerisms.

Over the past year, international human rights institutions such as the European Union Fundamental Rights Agency, and the Council of Europe's Committee of Ministers, Parliamentary Assembly and Human Rights Commissioner have generated a body of resolutions, recommendations, principles and opinions that clearly call on European Member States to address bias violence, hate crime and hate speech targeting LGBTI people (see *Annex 1 for a succinct overview*). It is now highly important to translate these soft laws and guidelines to hard laws that are backed up by a clear strategy for effective implementation.

In addition to the above, time and time again we observe that some Member States are reluctant or unable to grasp European Union obligations on the grounds of 'sexual orientation'. In fact, many Member States and accession countries have tried to neglect the obligation to clearly include 'sexual orientation' in the implementation of the *2000/78/EC Employment Framework Directive*. Oftentimes, they claimed that this particular obligation was already met through the inclusion of 'or other similar ground' in the non-discrimination articles of their labour codes.

Similarly, many Member States still disregard the inclusion of the ground of 'gender identity' within the scope of the ground of 'sex' in spite of the fact that the European Court of Justice (ECJ) was very clear in this regard in the 1996 case of *P v S and Cornwall County Council* when it ruled explicitly that "discrimination arising ... from the gender reassignment of the person" is discrimination on the ground of sex and accordingly that EU instruments implementing the principle of equal treatment between men and women should be interpreted to provide protection from discrimination to trans persons.<sup>8</sup> This position has been endorsed by the EU Member States in a statement by the Joint Council and Commission which confirms that the *2004/113/EC Goods and Services Directive* protects those "intending to undergo, undergoing or who have undergone gender reassignment" while Recital 3 of the *2006/54/EC Gender Recast Directive* brought the ECJ decisions into the body of the text of EC legislation.

It will thus be important for the European Commission to develop clear guidelines on the implementation of its strategy for combating violence against women, explicitly outlining the duty to tackle all gender-based violence, including that targeting the LGBTI community. It will also be useful if such guidelines included the minimum standards that Member States need to adopt in order to meet their obligations under this strategy.

## II. Long Term Challenges

The key long term challenges that are experienced by LGBTI people in their achievement of gender equality and freedom from violence are: (i) gender-based stereotypes; (ii) patterns of patriarchy; (iii) homophobia and transphobia; and (iv) gendernormativity and heteronormativity<sup>9</sup>. On several occasions, LGBTI peoples do not meet the expected gender presentation, and/or sexuality that is widely shared as 'natural' within society and as a result suffer from significantly higher risks of invisibility and marginalisation, as well as harassment and violence as has been widely documented.<sup>10</sup> Due to the above, combating gender-based

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<sup>8</sup> Case C-13/94, *P. v. S. and Cornwall County Council* judgement of 30 April 1996. Subsequent decisions in *K.B. v NHS Pensions Agency* and *Sarah Margaret Richards v Secretary of State for Work and Pensions* have confirmed this position.

<sup>9</sup> All of these are 'weapons of sexism', in that its effect is to deter and punish expression and behaviour which do not conform to, and therefore undermine, patriarchal concepts of gender and gendered roles. For more detail refer to the response to question 1.2

<sup>10</sup> See FRA, *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States. Part II - The Social Situation* (2009)

[http://fra.europa.eu/fraWebsite/attachments/FRA\\_hdgso\\_report\\_Part%202\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_Part%202_en.pdf)

Whittle, S., Turner, L. and Combs, R. *Transphobic Hate Crimes in the European Union* (2009)

[http://www.pfc.org.uk/files/Transphobic\\_Hate\\_Crime\\_in\\_EU.pdf](http://www.pfc.org.uk/files/Transphobic_Hate_Crime_in_EU.pdf)

Ottosson, D., ILGA, (2009) *State-sponsored Homophobia – A world survey of laws prohibiting same sex activity between consenting adults* (2009)

[http://ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2009.pdf](http://ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2009.pdf)

stereotypes should be a key priority in the strategy combating gender-based violence. Further efforts should be undertaken to address patriarchy, stereotypes against LGBTI people, gendernormativity and heteronormativity.

1.2 *What, in your opinion, are the main causes of violence against women and how should they be addressed?*

### **I. Gender Stereotypes, Sexism and Gender Inequalities**

Negative attitudes towards LGBTI people are directly correlated to the level of gender stereotypes, sexism and gender inequalities that exist in a determinate society. The application of gender stereotypes of 'masculinity' in relation to men and 'femininity' in relation to women exposes many LGBTI people to discrimination and violence on the premise that they transgress gender boundaries. According to a research conducted in 2009 in five European countries, there is a correlation between gender stereotypes among the male population, and the probability of homophobic and lesbophobic acts of violence to be committed.<sup>11</sup> This discrimination is often rooted in the attacker who feels the right to 'police gender norms' and make sure that the 'binary gender norms' are enforced. 'Corrective rapes' of lesbian women who are said not to be feminine enough, or of trans women have been recorded on several occasions. (see Annex 2 for a number of testimonies from across Europe).

### **II. Patriarchy**

Patriarchy is still a problem that effects many women and is based on the lack of recognition of autonomy and control of women's behaviour, especially their sexual behaviour. This problem is particularly acute for many women who come from social, cultural, religious or ethnic minorities.

### **III. Homophobia**

Homophobia is a range of negative attitudes (such as antipathy, contempt, prejudice, aversion, and irrational fear) and feelings towards homosexuality and people identified or perceived as being lesbian, gay and bisexual. Homophobia is observable in critical and hostile behaviour such as discrimination and violence on the basis of a perceived non-heterosexual orientation.

### **IV. Transphobia**

Transphobia is a combination of cultural and personal beliefs, opinions, attitudes and aggressive behaviours based on prejudice, disgust, fear and/or hatred directed against individuals or groups who do not conform to or who transgress societal gender expectations and norms. Transphobia particularly affects individuals whose lived gender identity or gender expression differs from the gender role assigned to them at birth, and it manifests itself in various ways (e.g. as direct physical violence, transphobic speech and insulting, discriminatory media coverage and social exclusion). It also includes institutionalized forms of discrimination such as criminalization, pathologisation, or stigmatization of non-conforming gender identities and gender expressions.

### **V. Gendernormativity**

The practices and institutions that legitimise and privilege those who live in the gender they were assigned at birth. Gendernormativity negatively impacts upon trans people, people who do not identify with either gender, men who are perceived to be more 'feminine' than is socially accepted, and women who are perceived to be 'too masculine'.

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<sup>11</sup> Schuyf, J. MOVISIE *Geweld tegen homoseksuele mannen en lesbische vrouwen – Een literatuuronderzoek naar praktijk en bestrijding*, (2009) (a research funded by the Dutch Ministry of Justice) <http://www.wodc.nl/onderzoeksdatabase/aard-en-omvang-van-homofob-geweld.aspx?cp=44&cs=6780#project-informatie>

## VI. Heteronormativity

The practices and institutions that legitimise and privilege heterosexuality and heterosexual relationships as fundamental and 'natural' within society. Heteronormativity adversely impacts upon people who are known to be, or are believed to be gay, lesbian, bisexual.

## 2. Content for an EU strategy to combat violence against women

### 2.1 What should the general and specific objectives of the strategy be?

#### General and Specific objectives:

- Adoption of effective legal measures to counter gender-based violence and crimes that impact on other vulnerable groups, building upon the foundation set by the *Framework Decision on Combating Racism and Xenophobia as a Crime*;
- Place male violence against women as a core focus of the *EU strategy for combating violence against women 2011-2015*, while also addressing all gender-based violence by tackling violence motivated by an intersection of various grounds, including sexual orientation, gender identity and gender expression;
- Cover men who may fall victims of violence due to their gender non-conformity and/or gender reassignment; as well as all other persons whose gender expression may not meet the social expectations for the gender assigned to them at birth with regard to dress, behaviour and mannerisms;
- Map and build upon existing strategies implemented at local, national, and European levels, in order to promote relevant guidelines and good practices in areas such as awareness raising, education, combating hate incidents, and investigation and judicial proceedings; and
- Inclusion of strategic measures to proactively combat gender stereotypes and counter patterns of patriarchy, sexism, homophobia and transphobia, as well as gendernormativity and heteronormativity.

### 2.2 What specific action could the strategy include?

#### I. Adoption of legislation tackling gender-based violence (*and violence against other minorities and vulnerable groups*)

The EU has recognised that it has a vital role to play in the fight against racism and xenophobia as it adopted a *Framework Decision on Combating Racism and Xenophobia as a Crime*<sup>12</sup>. ILGA-Europe believes that the EU has a similar role to play in the fight against male violence against women, as well as homophobia and transphobia amongst others.

While recognising that this specific consultation is mainly focused on combating gender-based violence (and that hence violence based on other ground may not neatly fall in its parameters, other than as an aggravating factor or an intersection between grounds of discrimination), we believe that the EU should have comprehensive legislation that tackles violence and hate crimes against all vulnerable groups. In particular, ILGA-Europe believes that there is a need to combat homophobia and transphobia through criminal law and to recognise homophobic and transphobic motive as an aggravating factor in the commission of criminal offences (hate crimes).

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<sup>12</sup> Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, 28 November 2008

A 2008 survey<sup>13</sup> on violence based on sexual orientation and gender identity bias in OSCE countries concluded that “continuing violence motivated by hatred and prejudice based on sexual orientation and gender identity, though still largely unseen, is an intimidating day-to-day reality for people across Europe and North America”. The report explains that these crimes represent a significant portion of violent hate crimes overall, which are characterized by levels of serious physical violence, and that available data from government and nongovernmental reports suggest that there is an increase of such incidents.<sup>14</sup> Such violence constitutes a serious violation of fundamental rights. Homophobic hate speech and hate crime are also obstacles to the possibility for individuals to exercise their free movement and other rights in a non-discriminatory manner.

ILGA-Europe believes that homophobic and transphobic violence should be combated more effectively using EU wide criminal legislation, and that the EU should build on the *Framework Decision on Combating Racism and Xenophobia as a Crime* adopted by the European Council in 2008 to ensure protection of LGBT people who are exposed to crimes motivated by hatred. A similar recommendation was made by the Fundamental Rights Agency in its report "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States" (see Annex 1).

## **II. Addressing the culture of impunity**

In most parts of Europe there is a lot of under-reporting of violence and hate crime against LGBTI people. When such cases are reported, it is often the case that the police are ill equipped to deal with the issue and the perpetrators are never brought to justice. For example, murdered trans women are often reported as men, or as lesbians or gays. When the murdered trans person were sex workers, their perpetrators may never be brought to justice. The strategy, therefore, needs to address the culture of impunity.

## **III. Comprehensive strategy**

The EU strategy against gender-based violence needs to address all forms of violence, including physical; psychological; economical; and societal violence - both in the public and in private spheres. The strategy should also cover all gender-based violence and have specific programmes targeting women and gender minorities that may be particularly vulnerable to violence and hate crimes.

When it comes to trans persons the strategy should also address pathologisation<sup>15</sup> and stigmatisation of non-conforming gender identities and gender expressions, which practices pave the way for social marginalisation and various forms of violence.

## **IV. Work with and support civil society**

- Involve NGOs working for the rights of women in vulnerable groups, including LGBTI organisations, lesbian and trans specific organisations and other relevant groups, in strategies to prevent violence against these women, including awareness raising within their communities, promoting the need to report acts of violence, assisting with the training of law-enforcement officers and the judiciary, and working with law enforcement officers in policies to combat such violence.
- Such NGOs should also be involved in the protection and support of victims, assisting them to act as a first reference point for victims too afraid to contact the authorities, and in training staff in support services and refuges regarding the specific needs of such women who are victims of violence.

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<sup>13</sup> The survey was conducted in the 56 member states of the OSCE by Human Rights First, s a non-profit, non-partisan international human rights organization based in New York and Washington D.C. <http://www.humanrightsfirst.org/>. For additional evidence see supra note 10.

<sup>14</sup> Human Rights First, *Hate Crime Survey on Violence Based on Sexual Orientation and Gender Identity Bias* (2008), <http://www.humanrightsfirst.org/pdf/fd/08/fd-080924-lgbt-web2.pdf>

<sup>15</sup> The requirement for a diagnosis by psychologists and doctors, sterilisation and various bodily changes prior to formal gender recognition.

- Civil society at both European and national level needs to be supported in their work to fight violence against women and all other forms of gender-based violence. Funding programmes should make sure to cover all grounds of gender based violence and to cover gender minorities in their scope, specifically including LGBTI organisations and trans and lesbian specific organisations.

#### **V. Raise awareness**

Awareness raising activities and/or programmes should:

- make available to the general public appropriate information concerning gender-based violence including gender minorities, and its consequences for victims;
- make clear the links between patriarchal attitudes and gender stereotypes on the one hand, and gender-based violence on the other;
- include violence against gender minorities and other vulnerable groups of women, in conferences and information campaigns to mobilise public opinion;
- include specific and tailored information targeting those communities where patriarchal attitudes are most entrenched, with a view both to countering such attitudes, including with regard to vulnerable groups, and to enabling such women within those communities to seek help.

#### **VI. European Year on Violence Against Women**

Moreover, ILGA-Europe commends the proposal by EWL to establish 2013 as the *European Year on Violence Against Women* as such a high level European Union commitment would surely lead to great visibility of the issue and speed up the impact of the strategy. It would also help to establish links between Member State authorities and civil society organisations working to counter gender-based violence.

### *2.3 What thematic priorities, if any, should the strategy address?*

#### **I. Tackling gender stereotypes**

Gender stereotypes around strength, power, masculinity and femininity need to be tackled directly.

#### **II. Violent men**

Develop a campaign/programme that targets violent men directly and Male violence against minority women and other gender minorities. Include specific priorities related to minority women and other gender minorities, in line with their specific experiences of violence.

#### **III. An end to impunity**

Make sure that all gender-based violence is considered a crime in all EU States and punished by law.

#### **IV. Mainstreaming of the impact of gender-based violence into other portfolios**

Include gender-based violence in all EU policies: health; employment; fight against poverty; and human rights amongst others.

### **3. Complementarities and synergies**

#### *3.1 How can complementarities and synergies between the Commission's initiatives and actions by Member States; processes in Europe (such as the Council of Europe's future Convention on preventing and combating violence against women and domestic violence) and internationally; actions of civil society, be achieved?*

Combating all forms of gender-based violence requires a comprehensive strategy and includes cooperation between all public authorities, from European institutions to national and local agencies, as well as with the civil society.

The European Commission should indeed play a key role in ensuring that its initiatives are complementary to those of other stakeholders. When relevant, EU bodies should build on actions that have been successful at national and local level.

The legislation and initiatives adopted by national and regional administrations vary considerably. While the existing weaknesses are a powerful reason to support the EU strategy, the good practices implemented in some countries should be a source of inspiration. The European Commission should take the lead in promoting the highest standards existing in Europe in terms of combating gender-based violence. Special attention should be paid to initiatives aiming at:

- Raising awareness on the links between male violence against women, other forms of gender-based violence, patriarchal attitudes and gender stereotypes;
- Elaborating codes of conduct for media professionals which would take into account the issue of gender-based violence;
- Fostering a gender perspective in human rights education and sex education, to weaken prejudices and stereotypes;
- Including elements designed to eliminate prejudice and gender stereotypes in basic training programmes for members of police forces and the judiciary, as well as medical and social staff;
- Facilitating confidence in reporting all gender related crimes and incidents;
- Improving investigation and judicial proceedings standards as regards incidents of gender-based violence;
- A reinforced involvement of local, national and European NGOs working for the rights of minority women and LGBTI people in all the component of the strategy.

Generally speaking, the development of a culture free from gender stereotypes is a mainstream priority for law enforcement and criminal justice agencies and other public authorities to properly address violence against women from vulnerable groups, including LGBTI people. It is necessary to achieve a higher level of confidence to facilitate the reporting of incidents by victims and witnesses and data collection.

When relevant, EU Agencies such as the Gender Institute, FRA, the EIGE, CEPOL, the EASO, Eurojust, and EUROFOUND should be involved in the identification and the dissemination of good practices, and in the elaboration of guidelines.

The European Commission should also have a role in ensuring that the EU speaks with one voice in European and international fora:

- While welcoming the work towards a new *European Convention to Preventing and Combating Violence against Women and Domestic Violence* including on the basis of sexual orientation and gender identity, ILGA-Europe calls on the EU to make sure that all Member States' negotiation positions are consistent and supportive of the Convention's inclusiveness. Some of the areas covered by the Convention are of EU competence, and could become a party to this instrument. As a result, the EC representatives attending the negotiation meetings could also be given a consistent negotiation mandate.
- ILGA-Europe notes that the EU Presidency and a number of EU Member States have repeatedly promoted inclusive views within the OSCE and its institutions, in particular in the field of tolerance and non-discrimination, which includes the prevention of bias and hate violence. The EU and the new European External Action Service should build on the existing situation to promote the explicit inclusion of gender-based violence, including homophobia and transphobia, in all relevant OSCE declarations and commitments.

- The EU should also build on international human rights standards and instruments to address gender stereotypes and violence against women in all international policies, making good use of Common Foreign and Security Policy, European Neighbourhood Policy instruments. The EU and its Member States should refer, when relevant, to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.
- Moreover, ILGA-Europe believes that the *EU strategy for combating violence against women 2011-2015* needs to be coordinated with the *Follow-up strategy to the Roadmap for equality between women and men*<sup>16</sup> as gender inequality and gender-based violence have the same roots and are interlinked.

### 3.2 *How can Member State authorities, relevant international bodies and civil society organisations working on violence against women be involved in the proposed strategy to combat violence against women?*

A way to involve national and local public agencies in order to promote innovative actions would be to organise targeted and operational research and consultations to identify their best practices; and to urge them to take the lead in sharing their knowledge and strategies. A formal commitment by the European Council would be a powerful way to facilitate this process.

NGOs should also be consulted in a targeted way, to build on their expertise and on the actions they implement. When relevant, agencies such as the Gender Institute could promote such researches and consultations, as it has already been the case in previous consultations held by the FRA. NGOs working for the rights of minority women and other gender minorities – such as LGBTI organisations – should be particularly encouraged to participate to such consultations.

At the international level, the EU strategy should underline the positive actions taken by European institutions as well as national authorities, including by countries outside the EU. Actions undertaken in cooperation with the civil society should be highlighted. The EU should consider working together with the newly established “UN Women” UN Entity for Gender Equality and the Empowerment of Women (integrating the former UNIFEM).

## 4. Evaluation and monitoring

### 4.1 *What monitoring mechanism should be put in place to assess the progress and effectiveness of the strategy?*

#### I. Data collection

The issue of collection of human rights data and analysis is very important to ILGA-Europe. A key challenge in promoting and protecting the rights of LGBTI people is the relatively low numbers of statistical data and analysis on LGBTI issues. In its report on homophobia, the FRA stated that “the paucity of relevant data across the EU, which could inform about discrimination on grounds of sexual orientation, is striking”.

The collection of solid and comprehensive statistics regarding all forms of discrimination and violence, including discrimination on the grounds of sexual orientation and gender identity, is

<sup>16</sup> ILGA-Europe, *Contribution to the consultation on the roadmap for equality between women and men 2006-2010 and follow up strategy* (2009) [http://www.ilga-europe.org/home/publications/policy\\_papers/contribution\\_to\\_the\\_consultation\\_on\\_the\\_roadmap\\_for\\_equality\\_between\\_women\\_and\\_men\\_2006\\_2010\\_and\\_follow\\_up\\_strategy](http://www.ilga-europe.org/home/publications/policy_papers/contribution_to_the_consultation_on_the_roadmap_for_equality_between_women_and_men_2006_2010_and_follow_up_strategy)

needed to give visibility to human rights violations and to provide a solid basis for policy-making and law-making. In the collection of data concerning LGBTI, a delicate balance has to be struck between data collection and data protection measures and the respect for privacy. LGBTI people are often victims of violation of the right to private life<sup>17</sup> and therefore rules related to data protection and to respect for privacy are crucial for the protection of the dignity of LGBTI people. Guidance on data collection should be drafted which respect private life in co-operation with LGBTI representatives.

## **II. Further Research**

Further research and comparable data for the EU-27 is needed for the European Union to be able to measure the impact of its strategy and be in a position to readjust its follow-up strategy in 2015. To this end, specific research on gender-based violence within Member States, EEA countries, and accession countries by the Gender Institute and/or FRA would be very welcome. Eurostat research into attitudes and trends would also be very useful to provide a picture of the awareness on gender-based violence; knowledge about available remedies and other relevant matters.

## **III. Progress Reports**

The strategy should demand Progress Reports from Member States both in terms of the implementation of the legislation and in terms of the policies and programmes that they adopt to combat gender-based violence.

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<sup>17</sup> See *Dudgeon v. the UK*, App. 7525/76, 1981, Series A no 45; *Norris v. Ireland*, 1988, Series A no 142; *Modinos v. Cyprus*, 1993, Series A no 259; *B. v. France*, 24 January 1992, 57/1990/248/319

## **Annex 1**

### **Extracts from Resolutions, Recommendations, Principles and Opinions of Human Rights Institutions on the tackling of bias violence on the basis of sexual orientation and gender identity**

#### **European Union Fundamental Rights Agency**

*Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis (2009)*

[http://fra.europa.eu/fraWebsite/attachments/FRA\\_hdgso\\_report\\_Part%201\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_Part%201_en.pdf)

#### **11. Opinions**

##### **11.3. Approximation of criminal law combating homophobia**

Following the model of the framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328/2008), the European Commission should consider proposing similar EU legislation to cover homophobia and transphobia. This EU legislation needs to cover homophobic and transphobic hate speech and hate crime and approximate criminal legislation in the Member States applicable to these phenomena. Homophobic and transphobic hate speech and hate crime are phenomena which may result in serious obstacles to the possibility for individuals to exercise their free movement rights and other rights in a nondiscriminatory manner. These phenomena need to be combated across the European Union ensuring minimum standards of effective criminal legislation.

#### **The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007)**

[http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm)

#### **PRINCIPLE 5. The Right to Security of the Person**

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

States shall:

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;
- c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
- d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

**Committee of Ministers of the Council of Europe**

*Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (2010)*  
<https://wcd.coe.int/ViewDoc.jsp?id=1606669>

**I. Right to life, security and protection from violence**

**A. “Hate crimes” and other hate-motivated incidents**

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

**B. “Hate speech”**

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.
7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

**Parliamentary Assembly of the Council of Europe (1)**

*Discrimination on the basis of sexual orientation and gender identity Resolution 1728 (2010)*  
<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>

7. Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance. The boundary between hate speech inciting to crime and freedom of expression is to be determined in accordance with the case law of the European Court of Human Rights.
8. Homophobia and transphobia have particularly serious consequences for young LGBT people. They face widespread bullying, sometimes unhelpful or hostile teachers, and curricula which either ignore LGBT issues or propagate homophobic or transphobic attitudes. A combination of discriminatory attitudes in society and rejection by the family can be very damaging for the mental health of young LGBT people, as evidenced by suicide rates which are much higher than those in the wider youth population.
15. The eradication of homophobia and transphobia also requires political will in member states to implement a consistent human rights approach and to embark on a wide range of initiatives. In this respect, the Assembly stresses the specific responsibility of parliamentarians in initiating and supporting changes in legislation and policies in Council of Europe member states.
16. Consequently, the Assembly calls on member states to address these issues and in particular to:
  - 16.2. provide legal remedies to victims and put an end to impunity for those who violate fundamental rights of LGBT people, in particular their right to life and security;
  - 16.3. recognise that lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages) and provide protection commensurate with the increased risk;
  - 16.4. condemn hate speech and discriminatory statements and effectively protect LGBT persons from such statements while respecting the right to freedom of expression, in accordance with the European Convention on Human Rights and the case law of the European Court of Human Rights;

**Parliamentary Assembly of the Council of Europe (2)**

*Discrimination on the basis of sexual orientation and gender identity Recommendation 1915 (2010)*

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1915.htm>

3. Consequently, the Assembly recommends that the Committee of Ministers:

- 3.2.3. in the framework of its work on children and violence, address in particular the

- issue of homophobic and transphobic bullying at school;
- 3.2.4. further develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of lesbian, gay, bisexual and transgender people and, in particular, organise a campaign to combat discrimination on the basis of sexual orientation and gender identity;
  - 3.3. instruct the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to include in the future Council of Europe convention the severest and most widespread forms of violence against women, in accordance with Assembly Recommendation 1847 (2008) on combating violence against women: towards a Council of Europe convention, and to recognise that lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages) and provide protection commensurate with this increased risk.

**Thomas Hammarberg, Council of Europe Commissioner for Human Rights**

*Human Rights and Gender Identity Issue Paper (2009)*

[https://wcd.coe.int/ViewDoc.jsp?id=1476365#P277\\_71330](https://wcd.coe.int/ViewDoc.jsp?id=1476365#P277_71330)

The human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone. Transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity and the right to health.

**V. Recommendations to Council of Europe member states**

2. Enact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents.

## Annex 2

### A. Facts and Figures

#### **London Metropolitan Police Service**

*Women's Experience of Homophobia and Transphobia: Survey Report (2008)*

65% of the lesbian and trans women surveyed have already experienced incident(s) that they feel were homophobic or transphobic in nature; 94% of these women had experienced verbal abuse or harassment; 46% has experienced threats, intimidation or bullying; and up to 30% had experienced physical violence or assault.

37% of the women surveyed had experienced such an incident in the last 12 months.

Nearly two thirds (64%) of the women having experienced such incidents said they had a short-term or long-term impact on them.

In 62% of the incidents mentioned during the survey, there were at least two perpetrators. In 26% of the incidents mentioned, the perpetrator was known to the victim, and in some cases they were members of the victim's family.

83% of the incidents mentioned by the women surveyed went unreported to the police. 41% of the women who reported incidents to the police felt that police officers did not make it comfortable. In 42% of the cases, no action was taken by the police.

#### **SOS-Homophobie**

*Rapport sur l'homophobie 2009<sup>18</sup> (2009)*

<http://www.sos-homophobie.org/sites/default/files/ra2009.pdf>

Among the lesbophobic incidents reported:

23% took place in public settings;

18% within the family;

15% in the neighbourhood of the victim;

12% in the workplace;

11% in schools;

11% were linked to hate speech or intolerance in the media and internet;

8% in a context relating to the provision of goods and services; and

2% in medical settings.

#### **MOVISIE**

*Geweld tegen homoseksuele mannen en lesbische vrouwen – Een literatuuronderzoek naar praktijk en bestrijding (2009)*

<http://www.wodc.nl/onderzoeksdatabase/aard-en-omvang-van-homofob-geweld.aspx?cp=44&cs=6780#project-informatie>

Comparative data on homophobic and lesbophobic incidents, collected in Belgium, Germany, the Netherlands, Sweden, and the UK, show evidence that the perpetrators of LGBT-phobic violence are essentially very young men. An overwhelming majority of these men share similar and strong gender stereotypes and prejudices, as their violence is part of a broader gendernormative and heteronormative attitude.

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<sup>18</sup> based on the incidents reported to SOS-Homophobie's helpline in 2008

### **Press for Change**

*Transphobic Hate Crimes in the European Union (2009)*

[http://www.pfc.org.uk/files/Transphobic\\_Hate\\_Crime\\_in\\_EU.pdf](http://www.pfc.org.uk/files/Transphobic_Hate_Crime_in_EU.pdf)

This report is the first quantitative evidence of trans people's experiences of hate crime in European Union member states and is based on the responses that were received from 2669 trans persons from across Europe.

It found that:

- 79% of respondents had experienced some form of harassment in public ranging from transphobic comments to physical or sexual abuse.
- The most common forms of harassment were (unsolicited) comments (44%) and verbal abuse (27%). 15% of respondents had experienced threatening behaviour and 7% physical abuse.
- Drawing upon evidence from an earlier online survey from the UK, the researchers found that trans women may be more likely to experience harassment than trans men. 67% of trans women reported harassment compared to 57% of trans men. 24% of trans women had experienced verbal abuse compared to 20% of trans men.
- Italian respondents reported the highest percentage of comments (51%); Greek, German and British/UK respondents reported the highest levels of verbal abuse (25%); Greek respondents reported the highest levels of threatening behaviour (22%); English respondents reported the highest levels of physical abuse (7%) and French respondents, the highest level of sexual abuse (3%).

## **B. Testimonies<sup>19</sup>**

### **Ireland:**

#### **Transgender Equality Network Ireland**

*Transphobia in Ireland: Research Report (2009) pg. 21*

<http://www.teni.ie/Publications?action=AttachFile&do=get&target=Transphobia+in+Ireland+Report.pdf>

"Obviously he put his hand for my boobs because there's nothing there and this is the last memory I have and I woke up in hospital again. And my cheekbone had been fractured in four places. I'd been left for dead basically ..... I woke up and I was lying on a hospital bed ..... then I had plastic surgery on my face... I was terrified to tell the story of what happened so I just said I couldn't remember." (Male to female transsexual, heterosexual, 27).

### **Poland:**

#### **Campaign Against Homophobia & Lambda Warsaw Association**

*Situation of bisexual and homosexual persons in Poland: 2005 and 2006 report (2007) pg. 16*

[http://www.kph.org.pl/publikacje/sytuacja\\_bi\\_homo\\_2007\\_EN.pdf](http://www.kph.org.pl/publikacje/sytuacja_bi_homo_2007_EN.pdf)

"When I walk home after school, people provoke me, push, kick or ridicule me because of the way I dress. They say that although I am a girl, I dress in boy's clothes, and that I pay attention to women".

<sup>19</sup> N.B. Inclusion of examples from a particular country does not necessarily mean that that country's record is worse than another's. Nor does absence of examples from a particular country mean that that country's record is better than another's. The availability of information varies very much from one country to another. Moreover the purpose of the submission is to highlight issues rather than countries or individual cases.

"A group of young people from my town have harassed me many times to "persuade" me that there is no place for lesbians here. They've assaulted me verbally and physically. Once, I was beaten, too. They threatened that they would rape me to show how good it is to be with a man, because I need a man."

"The man with whom I used to have a relationship, later my friend. When I told him that I am a lesbian, he tried to persuade me that I was wrong. Certainly, I tried to explain everything and protested against what he was telling me. A moment later he decided to convince me physically that I was wrong. He practically raped me."

#### **United Kingdom:**

##### **Stonewall**

*Homophobic Hate Crime: The Gay British Crime Survey 2008 (2008) pg. 19*

[http://www.stonewall.org.uk/documents/homophobic\\_hate\\_crime\\_\\_final\\_report.pdf](http://www.stonewall.org.uk/documents/homophobic_hate_crime__final_report.pdf)

"One thing which often seems to be overlooked is the vulnerability of lesbians (particularly those who look butch) to violence. My partner has been beaten up on several occasions in the last decade, needing prolonged hospital treatment on one occasion. Men seem to want to target her because of how she looks rather than me -- I look stereotypically feminine."  
Carol, 27.

##### **Scottish Transgender Alliance**

*Transgender Experiences in Scotland: Research Summary (2008) pg. 11*

<http://www.scottishtrans.org/Uploads/Resources/staexperiencessummary03082.pdf>

"I had to move out of the town I was staying in due to violent, intolerant people in the area, including my immediate neighbours... I feared for my own personal safety so much I was restricted to my flat on many occasions for weeks or even months on end."

"Beaten up frequently and dog shit rubbed on my face."

### **Annex 3**

#### **Mapping of the current legal and social situation regarding homophobic and transphobic violence**

ILGA-Europe map highlighting the patchy legislation tackling homophobic and transphobic hate crime/speech in Europe (2009)

[http://www.ilga-europe.org/home/issues/hate\\_crime/resources\\_on\\_hate\\_crime\\_and\\_violence/map\\_of\\_homophobic\\_and\\_transphobic\\_hate\\_crime\\_speech\\_legislation\\_in\\_europe](http://www.ilga-europe.org/home/issues/hate_crime/resources_on_hate_crime_and_violence/map_of_homophobic_and_transphobic_hate_crime_speech_legislation_in_europe)

TGEU map that plots the 197 reported murders of trans people that occurred in 2009 alone. 17 of these murders took place in the EU-27 countries, candidate countries and potential candidates.

<http://www.transrespect-transphobia.org/uploads/images/maps/TvT-TMM-2009-en.png>